

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FISH, WILDLIFE AND PARKS**

**Call to Order:** By **CHAIRMAN DANIEL FUCHS**, on February 8, 2001 at  
3 P.M., in Room 152 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Daniel Fuchs, Chairman (R)  
Rep. Joe Balyeat, Vice Chairman (R)  
Rep. George Golie, Vice Chairman (D)  
Rep. Keith Bales (R)  
Rep. Debby Barrett (R)  
Rep. Paul Clark (D)  
Rep. Ronald Devlin (R)  
Rep. Tom Facey (D)  
Rep. Nancy Fritz (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Larry Jent (D)  
Rep. Jeff Laszloffy (R)  
Rep. Diane Rice (R)  
Rep. Rick Ripley (R)  
Rep. Allen Rome (R)  
Rep. Jim Shockley (R)  
Rep. Donald Steinbeisser (R)  
Rep. Bill Thomas (R)  
Rep. Brett Tramelli (D)

**Members Excused:** Rep. Ronald Devlin (R)

**Members Absent:** Rep. Brett Tramelli (D)

**Staff Present:** Linda Keim, Committee Secretary  
Doug Sternberg, Legislative Branch

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 480, 2/5/2001; HB 481,  
2/5/2001  
Executive Action: HB 305; HJ 16

**HEARING ON HB 480**

**Sponsor:** REPRESENTATIVE STEVE GALLUS, HD 35, BUTTE

**Proponents:** Bob Pavlovich, representing constituents  
Frank Stanchfield, Outfitter from Wise River  
David Dittloff, Montana Wildlife Federation

**Opponents:** Robin Cunningham, Fishing Outfitters Association  
Amy Sullivan, Montana Tourism Coalition

**Opening Statement by Sponsor:** REP. STEVE GALLUS, HD 35, BUTTE, summarized HB 480 as an act creating a moratorium on the issuance of new fishing outfitter licenses. He distributed the Fiscal Note, **EXHIBIT(fih32a01)**. He stated sportsmen and outfitters must come together and compromise to find a way to manage the use of our rivers and streams for commercial and sporting interests. If we continue the route we are on, this is only going to get worse.

**Proponents' Testimony:**

**Bob Pavlovich, Butte** representing tavern owner constituents in Butte who live and fish in the Big Hole. HB 480 is a Bill to take care of the citizens who want to fish. Asks for support.

**Frank Stanchfield, Outfitter from Wise River** who works on the Big Hole. Said he supports the Bill. Wants to see transferability addressed at some point. Keep the moratorium on to protect the river; will make the situation worse if we don't.

**David Dittloff, Montana Wildlife Federation** said they support HB 480 in concept, but are concerned that transferability is not addressed. They are not supportive of reducing the total number of outfitters, but the way outfitters are replaced underneath this cap is very important. Feels strongly that decisions affecting our publicly owned rivers and streams should be public decisions made by whatever agency is appropriate. Currently, there is a cap of 543 on hunting outfitters. If the cap were reached, it would allow each outfitter selling their business to be able to hand pick who they transfer their license to. MWF feels that would create a substantial property right; to the detriment of resident sportsmen. For example, the person buying the business conceivably has a legal right to maintain the business at its current use level. In situations where purchasers buy these rights, there are certain considerations. The property rights associated with that could be legal, and may have a lot of clout. At times, the courts may side with them, saying this person made business decisions, and took out loans from banks; their use levels should be reduced. Not saying use levels need

to be reduced in the future, only in case something happens to the fisheries on certain rivers, or if there are use conflicts. FWP and the Legislature should have the ability to adjust those use levels if conditions warrant. Even when there is not a legal property right associated with it, what often happens is someone that has purchased the license and made the business decisions will generate a lot of clout with decision makers. It is hard for resident sportsmen to go into a body like the Legislature, FWP, Board of Outfitters, etc. and make a case. Resident sportsmen like to recreate on the rivers, but they don't have businesses contingent upon them. Quite often, money decisions take precedent over what should be the right thing on the river; whether it is for biological, the fishing resource, or for resident sportsmen's quality of recreational experience. Suggest amendments which include transferability and how it would be conducted. Suggest it go through its own process, back to the Board of Outfitters, back to FWP, whatever agency is appropriate. Every interested outfitter who has been excluded under the cap should have the equal opportunity to obtain a fishing outfitter license. Hand picking gives preference to certain folks in a way that does not benefit the public interest. If the outfitter is allowed to transfer their license to the buyer of choice, it can affect future decisions regarding that publicly owned resource.

#### **Opponents' Testimony:**

##### **Robin Cunningham, Fishing Outfitters Association of Montana**

presented written testimony which he followed in his remarks, **EXHIBIT (fih32a02)**. He said they oppose HB 480 for two reasons: 1) If the idea is to reduce crowding, the Bill targets the wrong group, 2) There is no proof that outfitters are responsible for a statewide problem. If there is a proven local problem, this statewide approach is an unnecessarily broad solution. Controlling outfitters won't solve the crowding problem, and it may have unintended side effects.

**Amy Sullivan, Montana Tourism Coalition** said HB 480 is way too large and too far in scope. It stops economic growth statewide. It's not just about the Big Hole and the rivers in **REP. GALLUS'** district. We have people in other parts of the state who would love some economic growth on their rivers. Please oppose HB 480.

#### **Questions from Committee Members and Responses:**

**REP. BALLYEAT** said he would like to know how fishing outfitters are currently licensed. **Robin Cunningham, FOAM** said the Board of Outfitters has qualifications for any licenser, which are the same for hunting and fishing outfitters. Qualifications for a fishing outfitter include three years as a licensed guide. You

must take an examination and develop an operations plan that explains where you will be offering services, the equipment you will be using, and the personnel that you may or may not require. If you pass the test, the operations plan is approved, and you show the experience, you can get a license. **REP. BALLYEAT** asked who is on the Board? **Robin Cunningham** said there are currently seven members: four are outfitters, (one is fishing only, one is hunting only, two offer both hunting and fishing); there are two public representatives for sports persons, and one is a general public member. **REP. BALLYEAT** asked if the Board, approves all applicants, assuming they meet the qualifications? **Robin Cunningham** said to keep in mind that the Board is there to guarantee the quality of services. Once any applicant satisfies all the qualifications, the Board has little reason not to award the license. As in any other Board, there are special circumstances where a felon, for example, may be found not suitable for that particular license. Other judgmental factors do not enter in. **REP. BALLYEAT** asked how many new fishing outfitters have been licensed per year. **Robin Cunningham** defers to **Henry Warsech, Montana Board of Outfitters** who stated there are 559 licensed fishing outfitters in Montana. Currently there are 520 active, 31 inactive. There has been an average net gain of 5 per year for the last 4 years. **REP. BALLYEAT** asked if there is a limit on how many guides you can use. **Robin Cunningham** said no, it depends on the quality of the service that you want. **REP. BALLYEAT** said if we put a moratorium on new fishing outfitters, the existing outfitters could just hire more guides if there was a demand for their services. Wouldn't this just increase the economic clout of individual outfitters? **Robin Cunningham** said it is true in the sense that there is no limit to the number of guides as employees or independent contractors that they can employ or use to provide their services. If they have the ability to hire any number of guides to satisfy the demand that has been created, there may be the side effect of saying we have a locked system in which the individual outfitter is serving more clientele than previously, and reaping more rewards without the threat of competition. **REP. BALLYEAT** stated that if they put a moratorium so nobody new can be an outfitter except if they buy out an old outfitter's business, wouldn't that also increase the amount of economic clout of a fishing outfitter now that his license is worth a considerable amount of money, like an alcohol license. **Robin Cunningham** said that is a common presumption. Because of the way the licenses are awarded, it seems as if the outfitter gets to choose who his successor will be and it is automatic that the person receives the license. Obviously qualifications would come first. Would say yes, that is a possibility.

**REP. RICE** asked for elaboration on stats relating to the tourism industry for the Big Hole and Beaverhead areas. **Amy Sullivan, Montana Tourism Coalition**, stated she does not have this information but can get it from Travel Montana. **REP. RICE** asked if tourism was up or down last year, in light of all the fires we had. **Amy Sullivan** answered they were down. Stats showed we lost 3-4% overall. **REP. RICE** asked if it was a collective goal of all the government agencies to try to increase the economic climate of Montana? **Amy Sullivan** answered yes.

**REP. RIPLEY** asked if there is any data on the public health and safety issue of overcrowding our rivers? **REP. GALLUS** said there is no good data right now. We have studies from the department showing the amount of use, but don't show the amount of impact. There is no accurate data available. **REP. RIPLEY** asked if there is any data on the amount of usage for fly fishermen vs floaters, etc.? **REP. GALLUS** said they may have some data as to what users are doing. The impact is a different story. Could supply that sort of information. **REP. RIPLEY** said if there isn't a lot of data available, how do they know there is a problem? **REP. GALLUS** said this is a little off line. This Bill is not about economic development. There is a problem and how we want to attack it is basically a compromise. Trying to bring sports people and commercial fishing industry people together. Wants the commercial people to say it is okay to shut the door on the number of commercial licenses in the state. Wants to get the sports people to say it is okay for the commercial people who have families that support the communities with their business to be able to transfer and sell their business. **REP. RIPLEY** said he is not convinced there is a problem. **REP. GALLUS** said he will secure information from 1996 thru 1998 that will show the amount of fishing days on the Big Hole River.

**REP. CLARK** asked for the difference in limitations put on the hunting outfitter industry in regard to net client hunting use, and the limitations put on fishing outfitters, if there are any. **Henry Worsch** said hunting and fishing outfitters are two separate entities. Hunting outfitters operate on private or public land and have to have permits to go on those lands. Fishing outfitters usually operate on the rivers and it is a public access issue; they have to operate below the high water mark. **REP. CLARK** asked if limitations are put on hunters based on net hunting use. **Henry Worsch** said that is one limitation. For an individual outfitter that hunts private land, they have to have a net client use for each species and category. Category 1 consists of the B 10 and B 11 licenses. Category 2 is the general draw for elk and deer, big game. Category 3 is upland game, waterfowl and turkey. If you want to hunt an outfitter

sponsored license under the elk tag, you would have to have the net client hunting use to provide the client those services.

**REP. CLARK** asked if there any such limitation placed on fishing outfitters? **Henry Warsech** said there is none that he knows of, other than the biennial rule on the Beaverhead and Big Hole. There may be limitations for rivers such as the Smith, for example. **REP. CLARK** stated if we stop the number of outfitters, we won't stop the expansion of outfitting and won't curb any increased competition between private and public interests on our streams, is that right? **Henry Warsech** said he didn't see any way to stop that.

**REP. GOLIE** asks if anyone knows of over-outfitting. **Frank Stanchfield, Outfitter** responds that on the Big Hole at peak times, Salmon Fly time June 10-July 1 they can experience some overcrowding. Perceived in the core areas; there is opportunity to spread out above and below. There have been no statistics that indicate overcrowding on the Big Hole at this time.

**REP. BALES** said each outfitter has an NCHU for big game, and probably more NCHU available than what there are licenses for. Is it primarily the availability of licenses that controls the amounts of hunters? **Henry Warsech** said only the outfitters that deal strictly on private land have to have an NCHU. Public land outfitters are dictated by the forest service permits. There currently are more NCHU available than there are licenses available. **REP. BALES** said the primary difference is that the big game outfitter is controlled by the number of clients that can get a license, and the fishing outfitter is not limited, is that correct? **Henry Warsech** said yes. **REP. BALES** asked if there are people who have not been able to get a license because they could not pass the fishing outfitter test? **Henry Warsech** said they have had people who had to take the test several times before they could pass it.

**REP. BALES** asked if individual stream reaches is a better way to handle this than on a statewide basis? **REP. GALLUS** said perhaps it is. In 1999, there was a bill dealing with two rivers. The argument at that time was that you can't just do two rivers; this is a statewide system. Since that was a problem, decided to do this Bill on a broad basis.

**REP. FACEY** asked how we might limit nonresident use? **Robin Cunningham, FOAM** said they would suggest a rationing plan for nonresidents. Visitors would still come to the state and offer some economic benefit, but on a limited basis. FOAM would prefer a rationing system where they have a choice, rather than a lottery where they only have a chance.

**REP. BALLYEAT** asked if there is a way to deal with this on problem rivers that doesn't hurt our tourism industry. Would it be of any benefit on these crowded rivers to say that an outfitted fisherman can do catch and release only? Would that do anything to reduce some of the animosity between residents and nonresidents? **Robin Cunningham** said his predominant clientele is nonresident and their predominant technique is catch and release. There are only a few who come in pursuit of a trophy fish. Since this is a predominant practice now, it may not offer sufficient disincentive for people to come.

**REP. BARRETT** said our duty is to protect our natural resources; what resources are being hurt? It doesn't matter whether the fish is being caught by a resident or a nonresident. Aren't they having the same impact, whether they live in the state or not?

**REP. GALLUS** said yes. **REP. BARRETT** asked if nonresidents are paying the majority of the cost for licenses? **REP. GALLUS** said he did not know how the total license costs of area residents compares to that of nonresidents. It isn't broken down by stream.

**REP. BARRETT** asked for a statewide breakdown of resident vs. nonresident costs. If crowding is a problem and if residents want the nonresidents out of here, the residents are going to have to put their money where their mouth is and they will have to start paying for these resources, don't you think? **REP.**

**GALLUS** said he agrees. There are concerns about impact on the resource. One year he fished over 160 days, and it was the greatest fishing he ever had in his 20 years of fishing. But when you think about impact, keep in mind the quality of the experience, and the solitude that has been lost.

**CHAIRMAN FUCHS** said tourism has grown to \$1.6 billion. It has continuously grown 3-4% a year since the bed tax was put in. Last year, even with the fires, the growth held even. People say there definitely is a problem. People that are paying their taxes are taking their kids to places where they have gone for years, and now these places are filled up. Do we have a sales tax in Montana? **Amy Sullivan, Montana Tourism Coalition** answered no. **CHAIRMAN FUCHS** said we are in a serious situation in terms of making decisions with our state. Like this problem we are facing, and with our tax structure. Want to get your information on the record. As these other issues come up, this information will be helpful.

*{Tape : 1; Side : B}*

Closing by Sponsor:

**REP. GALLUS** said he would like to address the economic concerns of this Bill. In Butte we have copper mines. The mining company

would start on a vein and when that vein ended, they would shut down. Talking about economic development; if we hurt our resources, the jobs we have now are gone. Continue down this path where we have no management on these fisheries, then we'll see what kind of economic development we have in 10-15 years. His goal is to bring people together to work this out. Want to slow outfitter growth, but also want a system that will add value to their businesses. We need a system where outfitters can sell their businesses, and if they sell it at a profit, hurrah. Use on the rivers is increasing all the time. He is looking forward to the discussions on this Bill.

#### **HEARING ON HB 481**

**Sponsor:** REP. STEVE GALLUS, HD 35, BUTTE

**Proponents:** David Dittloff, Montana Wildlife Federation

**Opponents:** Robin Cunningham, Fishing Outfitters Association

**Opening Statement by Sponsor:** REP. STEVE GALLUS, HD 35, BUTTE

said HB 481 is an act prohibiting the Board of Outfitters from approving Amendments to or changes in the operational plan of an outfitter to include operations on the Big Hole and Beaverhead Rivers; exempting amendments or changes to an operational plan that already includes those rivers in the operational plan and providing an immediate effective date. Last session, tried to limit the amount of commercial activity on two rivers; the Beaverhead and the Big Hole, and sparked a lot of interest. In the end, SB 445 was vetoed because of technical concerns. Another Bill did pass, which gave the commission authority to implement certain rules to mitigate conflict on area rivers. After the governor's veto, the commission proposed a moratorium on those two rivers and wouldn't allow the Board of Outfitters to add any new outfitters. This winter, thru biennial rule, the commission proposed to lift the moratorium. If the commission goes forward with their plan, every commercial outfitter in Montana would be wise to add both rivers to their plan, so they can start a history of activity on those rivers, in case we ever have a moratorium on them. Asks we approve this Bill, in essence blocking the commission from lifting the moratorium of those streams. Feels the level of use on those streams is adequate and doesn't want to hurt these two resources.

**Proponents:**

David Dittloff, Montana Wildlife Federation said there have been counter proposals to the draft proposals issued by the department



for both the Big Hole and the Beaverhead . Both include a two year moratorium and there would be no transfer of outfitting licenses during that time. This would give two years to work on a plan. There are two different consensus groups working on this that did not reach consensus on every issue. MWF said they believe transferability is important and not addressing it in the Bill is a significant problem. Suggest amendments be added to solve the transferability problem to make sure our resources and our angling opportunities are managed in the public trust to benefit everyone and not certain folks who have a privileged opportunity.

**Opponents:**

**Robin Cunningham, Fishing Outfitters Association** presented written testimony which he followed in his remarks to the committee, **EXHIBIT(fih32a03)**. Overcrowding is a local problem that should not be addressed on a statewide basis.

**Questions From The Committee:**

**REP. FACEY** asked about the Operational Plan? **Robin Cunningham** said the Board of Outfitters determined that it was necessary to know how and where they are outfitting. Outfitters list areas of rivers they typically operate on. **REP. FACEY** asked if you list a certain river for a certain month? **Robin Cunningham** said they list rivers with no specific time when they will be there. Current law says you can go at any time, whenever fishing is allowed in those particular rivers.

**REP. BALES** asked about information on the increase in river usage. **Robin Cunningham** said the information is available from Fish, Wildlife and Parks. They do a study every two years that generates the angling days on major streams in the state, divided by resident and nonresident. **REP. BALES** asked if the committee could have the information. **CHAIRMAN FUCHS** said they got it with HB 228. **Robin Cunningham** stated what the committee was given was the revenue generated by nonresidents on a particular river. It is derived from the same source. **CHAIRMAN FUCHS** asked for the information to be provided. **Robin Cunningham** said he would provide it for 1995, 1997, 1999.

**REP. THOMAS** asked what other streams have restrictions on them? **Robin Cunningham** said Alberton Gorge on the Clark Fork. Also through biennial rule on Beaverhead and Big Hole. Federal Agencies control Bear Trap section of the Madison River, Rock Creek and in conjunction with the state and a legislative act, they control use of the Smith River. The Forest Service currently restricts use on the Gallatin Forest, the Madison, the

Gallatin and the Yellowstone Rivers. **REP. THOMAS** asked for information about restrictions on the Smith River. Robin Cunningham said there a specific number of launches available on a daily basis which are divided up between outfitted and general launches. On the Smith, because it is a cooperation between Federal and State, there is no discrimination between resident and nonresident; you are either outfitted or you aren't. Under the Smith River Act, it was generated by the number of places that people could spend the night. It is not a multiple access river and has only limited campsites available.

**REP. CLARK** asked if there is a problem from overuse on the Big Hole and the Beaverhead from FWP point of view. **Rich Clough, FWP** said some perceive there is. This led to the consensus council being involved and putting together the working groups some of you are involved in. The constituents do feel there is. **REP. CLARK** asked what the problem is with FWP; is this a politically sensitive issue? **Rich Clough,** said this is not an easy answer. FWP was given authority last session to deal with social conflicts and they have been very careful not to overstep that boundary and jeopardize that part of their authority. Yes, there is a problem, or you wouldn't have two groups being at odds with each other.

**REP. BARRETT** asked for a map of the rivers showing the districts. **REP. GALLUS** said he would bring maps; neither is in his district. **REP. BARRETT** said when you speak of wanting business to be good, are you speaking about just the local outfitter business? **REP. GALLUS** said there are a host of "satellite" businesses that depend a lot on the outfitting industry. The town of Wise River in the summertime without the commercial fishing industry would have no one left in it. They are the one sustaining industry that keeps that town on the map. **REP. BARRETT** asked if he was just talking about the local businesses. Dillon is bigger and in the same district, but they are dependent on fishing too, aren't they? **REP. GALLUS** said yes.

**REP. BALLYEAT** asked **REP GALLUS** if he was still a guide or had any connections with this industry?. **REP GALLUS** said he no longer a guide, and his connection is that he is a sportsman who cares about the resource, who also has close friends who make their living in the industry.

**REP. BARRETT** asked whether in FWP's opinion there is an overuse problem in the Big Hole and the Beaverhead with the resource? **Rich Clough, FWP** said as far as the fish themselves, no, not that they have seen yet.

**CHAIRMAN FUCHS** asked if the Department had considered establishing time limits so that only residents could be out on in the mornings on certain days, possibly on Friday, Saturday and Sunday. What are your thoughts on that type of solution? **Robin Cunningham** said if this would characterize it as rationing the service providers in time, they like the idea. There are specific problems with clientele not being able to go until afternoon. This did happen during the fires last summer. Six hours go by awfully fast and the practical difficulties of only going for half a day make it hard for outfitters and their clients. Rationing rather than elimination is very attractive, however.

**CLOSING BY SPONSOR:**

**REP. GALLUS** said there are politics involved, and they center around what the Legislature did granting the commission some authority to deal with conflict. They came up with some decisions that perhaps went too far. Maybe the Legislature didn't intend to give them that much authority. The Department is only trying to do the best they can in appealing to both sides. In regard to HB 481, action needs to be taken. My area needs this Bill to protect resources in that area. These resources provide pleasure for many people and income for many families. Want to send a message to the commission that we did not intend to give them that much authority and if they overuse their interpretation of what the Legislature does, we will come up with Bills that specifically tell them what they can and cannot do, and we would rather not do that.

**CHAIRMAN FUCHS** said this has been going on for a long time, it is Montana's unlimited licenses that are causing the problem. He then read a letter from Jack River Outfitters which Jim Ellison forwarded which was written by Board of Outfitters Chairman Ron Curtiss dated December 1990, **EXHIBIT(fih32a04)**.

**EXECUTIVE ACTION ON HB 305**

**Motion:** **REP. GOLIE** moved that **HB 305 DO PASS**.

**Motion:** **REP. SHOCKLEY** moved that **AMENDMENT 30501 TO HB 305 BE ADOPTED**.

**Discussion:**

**Legislative Staffer Doug Sternberg** explained the Amendment, which has to do with offering a real property bond of an equivalent amount, so the licensee could put up his property instead of cash as a surety bond, **EXHIBIT(fih32a05)**.

Information about Game Farm Bonding was distributed  
**EXHIBIT(fih32a06)**.

**REP. SHOCKLEY** said a surety bond could put people out of business, a property bond is best.

**REP. GUTSCHE** said this helps compromise, and would protect the game farm owners as well as us and the resources. Copies of an article about an Oklahoma elk herd found to be infected with chronic wasting disease were distributed **EXHIBIT(fih32a07)**.

**REP. BALLYEAT** asked if **REP. SHOCKLEY** did property bonds and how much would be charged? **REP. SHOCKLEY** replied that he did, and it would cost under \$200. Sometimes a fee is also paid to the appraiser, his fee is based on the value of the property. That would be a one time fee. **REP. BALLYEAT** asked how it works if the farm is already mortgaged to the hilt. Does the bond work in all cases? **REP. SHOCKLEY** said it will work in many cases, but if you were already mortgaged to the hilt, where you owed \$100,000 and the property was only worth \$100,000, a property bond would do no good. If it were appraised at \$100,000 and the mortgage was worth \$50,000, then the bond would be worth \$50,000. If you had to collect on the bond, you have to sell the property. The first \$50,000 goes to the bank, and the next \$50,000 goes to you. **REP. BALLYEAT** said if this won't work in all cases, have we solved the problem of a surety bond not being available or being too high a cost, by amending this and inserting the ability to have a property bond? **REP. SHOCKLEY** said if the person is highly leveraged, there is no big problem. If they are financially viable, this is a good compromise. It satisfies most of what the agricultural interest wants, and it satisfies at least the legitimate interest of the sportsmen which is to be protected in case of CWD.

**REP. BALES** asked where else property bonds are required? **REP. SHOCKLEY** said they aren't really required, it is just one way of doing it. **REP. BALES** said then you are saying that normally a bond is not triggered until someone has gone to court? **REP. SHOCKLEY** said no, that is not what I mean. There are many instances when you bond. It is a surety; somebody is guaranteeing the money will be available for whatever purpose. A retail sales clerk may be bonded; if he absconds with the money, and they can't get him back, the bonding company will make the owner whole. A property bond is just a type of insurance.

**REP. RIPLEY** asked about suspected genetically polluted alternative livestock. Just because something is suspected, they do away with the animal at the owner's expense? **REP. SHOCKLEY** said that is exactly what they did at Phillipsburg. They didn't

think all the elk were infected, probably very few, but they destroyed them all. They destroyed the ones that were infected, and the ones that were not infected. **REP. RIPLEY** asked if there was even one confirmed case before they destroyed the animals? Refer to #5 of the Amendment. In this case, they wouldn't have to have any. **REP. SHOCKLEY** said FWP wanted to make sure the whole herd was wiped out, just like if they had brucellosis or some other livestock disease. FWP incurred a cost for this. When one member of the herd has the disease, like they did at Phillipsburg, they killed them all. **REP. RIPLEY** asked if there was a confirmed case. **REP. SHOCKLEY** said yes. **REP. RIPLEY** said, here they wouldn't have to, they could suspect. **REP. SHOCKLEY** said he was trying to address a Phillipsburg type situation where they have one confirmed case and then kill a lot of animals. In that case, if they can't come on your property simply because they suspect there is disease present, they would have to go to court to get permission to kill your animals if you contested it.

**REP. BALES** said he disagrees with the word "suspected". It says, or genetically polluted alternative livestock, and what that means to me is that covered the Phillipsburg problem in that they were genetically polluted because they had gotten an animal out of there that tested positive. If you put "suspected" in, they don't have to have a test animal that tests positive. They can just say, I think they might have it; I believe I'll go check. You have opened the door a lot wider by using "suspected". The way it works now, they have to have a positive case documented with the place the genetically polluted alternative livestock came from and that gives them the right to go in there. By using "suspected", you have bypassed the requirement to have an animal diagnosed there.

**REP. FACEY** said one of the problems is you can't run tests on CWD until the animal is killed, so you can suspect it, kill the animal and find out. Suggests segregate #5 of the Amendments from 1-4 and vote on 1-4 first.

**Motion:** **REP. FACEY** moved to **SEGREGATE #5 OUT OF AMENDMENT 01 TO HB 305.**

**Discussion:**

**REP. THOMAS** asked for confirmation that they would be voting on 1-4, the concept of a property bond. He said he was previously a dentist, and was never required to get a surety bond or a real bond even though he was dealing with humans who are on a much higher scale than the animals we are talking about here. He purchased liability insurance. He said he is currently a rancher and has property and liability insurance for people that came on

his property. Can't see why this should be elevated to bonds just because you raise animals. Does the federal government carry a bond, just because of the brucellosis carried in their buffalo? Need to put the problem into perspective. Said he is opposed to this Bill.

**{Tape : 2; Side : A}**

**REP. GUTSCHE** said she agrees with segregating the amendments since they are totally different. Bonding is a specific insurance, a species. We require bonding for all sorts of things, mining is one of them. Either we need to have the folks who are making their living on this pay for it through bonding, and this is a way to make it much less expensive. Or, the hunting and sports folks will pay for it if there is an accident, or the state will. This is a good compromise. Urges support.

**Motion/Vote: REP. FACEY** moved to **SEGREGATE #5 FROM AMENDMENT 30501. Motion carried 12-7.**

**REP. BALES** said if we are going to start demanding bonding, maybe we should have demanded it from the federal government for their bison because they had brucellosis and it has been shown that can be transferred to cattle. It has been shown the brucellosis is an agent that causes undulant fever in people. It has not been shown yet that CWD can be or is necessarily related to Mad Cow Disease or any disease in humans, yet the precedence that we are starting here is very troublesome to me. As soon as we do this, someone will say let's have all these livestock people have a bond. Where will that end. Another thing is the cost of the cleanup in Phillipsburg which was born by the Department of Livestock (DOL). Alternative livestock producers are paying a per capita to the DOL of \$24 a head, and the DOL wasn't here testifying that we need to have those people bonded because it's costing us. They are content with the system we have in place to take care of this. Their comment was they had the money in place and they took care of it. The alternative livestock producers got together and put up money to reimburse for those animals. They took that upon themselves, so to say they are not responsible and have to be bonded is not right either. This is a poor Bill and a very bad precedent to set. We will all be the worse for it if it passes.

**Motion: REP. GUTSCHE** moved **HB 305 AS AMENDED.**

**Discussion:**

**REP. BALYEAT** said he opposes this Bill even in its amended form. All the testimony talked of the magnitude of the loss, but none

talked about the probability of a loss. From a business perspective you have to look at both, this is a low probability. The magnitude of a human life being lost in dentistry is huge, but the probability is extremely low. With mining bonds, you know there is 100% probability that at the back end, there are going to be some costs that need to be covered. Changing it to a property bond may alleviate some of the problems and makes it less onerous to some game farm owners, but doesn't solve it for everyone. This is forcing a bad business decision on an industry that could cover it in another way. If the Bill simply said if a game farm screws up, they will have to cover the costs at the end, I might support it, but can't support this one. This is putting something on an industry that you don't require of any other, and you're not taking into account the low probability of there being a problem. Will vote to table it.

**REP. LASZLOFFY** said the argument in his E Mail is that sportsmen shouldn't have to carry the weight of the alternative livestock producers. What has been the payout from FWP or DOL to date, and are sportsmen carrying the weight? **REP. GUTSCHE** said from 1995-1999 the DOL collected \$200,000 every year to regulate game farms. They are dually regulated by FWP and DOL. Money came from those fees. Game Farmers paid \$38,850 in fees which didn't come close. Sportsmen say why should we pay this when Game Farmers should be self insured. **REP. LASZLOFFY** asked what the \$200,000 was spent on per year? **REP. GUTSCHE** said regulating and monitoring game farms, not the clean up. **REP. LASZLOFFY** said, then what we are doing today won't affect that dollar amount. It will be paid out anyway since they are still monitoring the program and this bond covers accidents. **REP. GUTSCHE** said she thinks it would cover. If there is CWD or escaped animals, that is where the Bond would kick in. Like insurance, you don't use it unless you need it. I do believe it would cover those situations.

**REP. LASZLOFFY** said if FWP is spending \$200,000 a year to regulate the program, is that strictly regulation and administration or is it fixing problems? If it is not fixing problems, the bond won't cover it, and we will still have sportsmen paying \$200,000 a year. **REP. CLARK** said the \$1 million covers everything, fixing problems, administration, EIS and EA primarily. Historically, EIS and EA have been the bulk of the cost for the game farms.

**REP. FACEY** said this could be a lot cheaper than a voter initiative, and a bond could make it a lot tougher.

**REP. RICE** said there has been only one incident that required cleanup. **REP. GUTSCHE** said that there are two now. The one in

Oklahoma was from a Montana herd. The biggest case was at the Kessler Farm. There are lots of cases of escaped animals. The problem is that the potential to spread this disease is huge. Diseased animals, either killing or testing, and escapes would be covered by the bond. **REP. RICE** said it is very ironic that domestic buffalo are not covered in this, and they are the most diseased prone animals. This is probably the most discriminatory Bill that I have seen, as far as singling out one particular segment of an industry. I agree with **REP. BALES**, this is really a bad Bill, please don't pass it.

**Substitute Motion/Vote:** **REP. THOMAS** made a substitute motion that **HB 305 BE TABLED**. Substitute motion carried 11-9 with **Clark, Facey, Fritz, Gallus, Golie, Gutsche, Jent, Shockley, and Tramelli** voting no.

#### **EXECUTIVE ACTION ON HJ 16**

##### **Discussion:**

**Legislative Staffer Doug Sternberg** said this is not a legislative interim study that would be funded by the Legislature. Costs would be the responsibility of the Agencies involved.

**CHAIRMAN FUCHS** asked **Rich Clough, FWP** if the department is financially prepared to handle this if it is passed. **Rich Clough** answered yes, but we would welcome some General Fund money.

**Motion:** **REP. GALLUS** moved that **HJ 16 DO PASS**.

##### **Discussion:**

**REP. RIPLEY** asked if the Department of Livestock (DOL) and Health and Human Services (HHS) is prepared to help fund this too? **Doug Sternberg** said that the way the resolution is worded is that FWP would be the lead agency that would coordinate and seek input. The primary burden would fall on them. If the other agencies have money available that they wanted to contribute they could. **REP. RIPLEY** asked if anyone has visited with DOL and HHS, are they even aware of this? **CHAIRMAN FUCHS** said this has been in the bill draft process for a long time.

**REP. BARRETT** said this happened in one of her counties, someone wanted to plant a noxious weed to raise for a crop. The county has the power to stop it; I don't know that we really need this.

**REP. GALLUS** said he would support this. It is worthwhile to study the potential problems associated with exotic species. I



would hope they would try to identify the risks with different species. This is just about seeking information, it is not about using information; that would come later. At that time, the Legislature could make those decisions. Doesn't see a problem with collecting information.

**REP. CLARK** said the more knowledge we have, the better decisions we can make. For example, it was not known until we got elk and red deer together that they could interbreed. That could affect the gene pool. This is more of a preventive measure; the more knowledge we can gain, the more decisions we can make to protect our wildlife resources.

**REP. THOMAS** said he supports this and feels there are positives to be gained. For example, venomous snakes for venom collection in treating certain diseases. Had thought of raising them commercially.

**Motion/Vote:** **REP. GALLUS** moved that **HJ 16 BE CONCURRED IN. Motion passed 15-5.**

End of Executive Action.

**ADJOURNMENT**

Adjournment: 5:25 P.M.

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REP. DANIEL FUCHS, Chairman

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LINDA KEIM, Secretary

DF/LK

**EXHIBIT (fih32aad)**